

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELIZABETH SILVER,

Plaintiff,

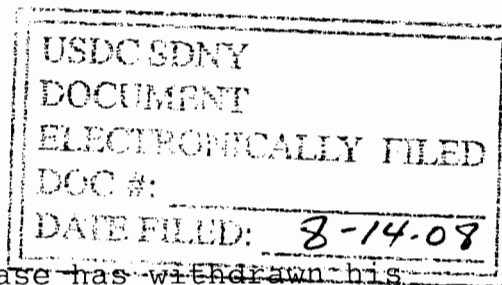
-v-

MARIO HERMANDO LAVANDEIRA JR., a/k/a:
MARIO LAVANDEIRA, a/k/a PEREZ
HILTON,

Defendant.
-----x

08 Civ. 6522 (JSR)

ORDER



JED S. RAKOFF, U.S.D.J.

Defendant in the above-captioned case ~~has withdrawn his~~
motion for emergency relief pursuant to a letter dated August 13,
2008, attached hereto, which was submitted to the Court with the
Court's permission. In the letter, counsel also requests a change in
the schedule previously set for the defendant's motion to dismiss.
Since the matter no longer requires this Court's immediate attention,
and since the proposed schedule would postpone the hearing on the
motion to a time that presents potential conflicts with the
scheduling of other matters, the Court hereby refers the motion to
dismiss back to the Honorable Debra C. Freeman, United States
Magistrate Judge, together with all other pretrial matters, and
directs the parties to promptly communicate with Judge Freeman to
work out a new schedule for the motion to dismiss.

SO ORDERED.


JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
August 13, 2008

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August 13, 2008

VIA HAND DELIVERY

Honorable Jed S. Rakoff
United States District Court Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Silver v. Lavandeira*
Case No.: 08 CV6522,(JSR) (DCF)

Dear Judge Rakoff:

This firm represents the defendant in the above referenced action. I apologize for troubling Your Honor in this manner, but the *pro se* Plaintiff has refused both my telephonic and written requests to have a conference call with chambers. Attached hereto as Exhibit A is a copy of a letter that I just received by e-mail from the Plaintiff refusing to participate in any conference call.

Briefly, we appeared before Your Honor yesterday to discuss a possible application by my client with regard to an improper posting by Plaintiff on her website. At the end of the conference, Your Honor set a motion schedule which would have me submitting papers by this Friday. Your Honor also set a schedule for the submission by my client of motions to dismiss the complaint on September 5, 2008, with opposition papers submitted on October 3, 2008, reply submitted on October 10, 2008 and oral argument to occur on October 17, 2008.

Today I requested that Plaintiff join me in a call with chambers so that I could inform Your Honor of two issues.

First, given the personal jurisdiction concerns raised by the Court yesterday, my client has elected not to make the motion with regard to the posting, and as a result, we will not be

Honorable Jed S. Rakoff
USDC/SDNY
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submitting any papers this Friday. Instead, my client will be considering the relief that can be obtained in the prior pending California action.

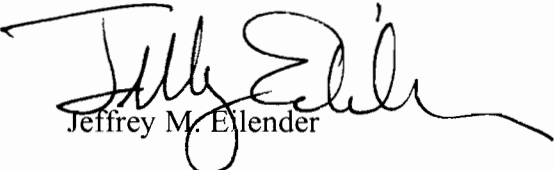
Second, when I appeared before Your Honor yesterday, I did not have my calendar with me and thus did not realize until today that Yom Kippur begins on the evening of October 8, 2008 and continues through October 9, 2008. Moreover, I have a long-standing commitment to be in Italy from October 10, 2008 through October 18, 2008, which means that I would not be able to appear at the oral argument currently scheduled for October 17th. I did not remember the days of Yom Kippur or of my trip when I appeared before Your Honor yesterday and apologize for not raising them at that time and for any inconvenience to the Court.

I propose that the schedule be modified so that the Plaintiff's opposition would be due on October 17th (giving her two extra weeks); my reply would be due October 24th; and the oral argument would occur in the last week of October or first week in November, if so convenient for the Court. Alternatively, I ask that Plaintiff be directed to serve me by hand or email so that I actually have her opposition papers in my possession by 5:00 pm on October 3 and that only the oral argument date be moved to some date after October 20.

I spoke to Plaintiff on the telephone today at approximately 11:00 a.m., and explained all of this to her. I also sent her an email this morning as well. Both in our telephone conversation and in my email, I requested that she participate in a teleconference with me and chambers. During our telephone conversation, she told me that she could not call chambers at that moment, and would call me back. She never did so, and instead, sent me the enclosed e-mail, refusing to participate in any calls.

Accordingly, I respectfully request that the Court either direct the Plaintiff to participate in a conference to discuss the scheduling issue; or that the Court approve the modifications suggested above.

Respectfully submitted,



Jeffrey M. Elender

JME/gc
Encls.

cc: (via e-mail with enclosures)
Elizabeth Silver

Elizabeth Silver

545 8th Avenue, Suite 801 New York, NY 10018
Tel # (646) 719-0003 & Email: liz@perezrevenge.com

August 13, 2008

Via E-mail Attachment: jme@schlamstone.com
Jeffrey M. Eilender Esq.
Schlam Stone & Dolan
26 Broadway, 19th Floor
New York, NY 10004

Via Fax # (310) 201-0005
Bryan Freedman Esq.
Freedman & Taitelman, LLP
1901 Avenue of the Stars, Suite 500
Los Angeles, California 90067-6007

Re: Silver v Lavandeira, 08-cv-6522 (JSR)(DCF)

Dear Messrs. Eilender & Freedman¹:

As you know, I am a pro se plaintiff in this matter. I am in receipt of your (Mr. Eilender's) email and am amazed that you are so blatantly attempting to Judge Shop and Forum Shop.

I find your conduct in this matter troubling.

Since your entry in this case on June 28, 2008, you have pushed me into two prior Conference Calls because you claim you needed the Court's emergent attention. Now, you seek a third Conference Call. This latest emergency appears to be designed so you and attempt to evade compliance with the Court's directives yesterday and the Order from today. I do not agree with your actions. Here is why.

- On Friday Aug. 8, 2008 (after NYC business hours) I received two phone calls after hours by Mr. Freedman and his associate Mr. Kaplan, in which I was screamed at, threatened me and told that if I did not comply with your demands you "would sue me on Monday";
- On Monday Aug. 11, 2008 (morning) - You wrote the Hon. Jed S. Rakoff USDJ seeking expedited relief (*the exact same relief that Messrs. Freedman and Kaplan demanded of me on Friday Aug. 8*) from the New York Federal Court for what you claimed was an **emergent matter** related to your client Mr. Lavandeira. You chose your forum in which have this argument and you chose your Judge before whom you were making the application;

¹ I am including Mr. Freedman as an addressee on this letter because it is my understanding after looking at the Docket in this case that he is admitted to act as a lawyer in this case. And, it is my understanding that anything done by you in this case is done after consultation with your co-counsel Mr. Freedman, your client Mario Lavandeira and with their full authority and consent.

Elizabeth Silver

Jeffrey M. Eilender Esq. & Bryan Freedman Esq.
Re: Silver v Lavandeira, 08-cv-6522 (JSR)(DCF)
August 13, 2008 Letter – Page 2

- On Monday Aug. 11, 2008 (mid-day) - You demanded that I participate in a Conference Call with Judge Rakoff's clerk to schedule an emergent hearing.
- On Monday Aug. 11, 2008 (afternoon) - The Court and I indulged your professed need for an emergency hearing at which you could seek relief, to which you said your client was entitled. The Court scheduled a Conference and Held Oral Argument on your "emergent" application less than 24 hours from the date of your request.
- On Tuesday Aug. 12, 2008 from 11:30 to 12:40 am – The Court held the Hearing that you demanded. I attended and opposed your application. Judge Rakoff heard and considered all your arguments. Judge Rakoff then set a briefing schedule from the bench (considering your calendar) (i) for your application for alleged emergent relief and (ii) for the Motion to Dismiss which you told Judge Rakoff's clerk on July 29th would be filed within two weeks (which time has come and gone). The Court even extended you additional time, **after you referenced your calendar**, in Court to accommodate what you said were *"travel plans to Montauk with his children"*.
- On Wednesday Aug. 13, 2008 (morning) – The Clerk's office posted the schedule for the two Motions based on your Oral Argument at the Aug. 12, 1008 Hearing.
- On Wednesday Aug. 13, 2008 (*after the Scheduling Order was entered into the Court's electronic docketing system*) – you called demanding an immediate Third Conference Call with the Court. Your announced purpose of the call was so you could change the schedule that the Court set yesterday and entered into the system today.
- On Wednesday Aug. 13, 2008 – in response to my request that you put in writing the basis for your seeking yet another Conference Call with the Court (the second in less than 2 days), you sent the attached email.

Here is my response.

First of all, in the event you insist on presenting a request for a Conference Call in which you can request (and presumably be granted) an extension of time or a request for alteration of the schedule set by Judge Rakoff, after yesterday's Oral Argument and Hearing, I do not believe any such Call is necessary. If the Court deems such a Conference Call necessary, I will of course participate. I suggest you put any request you wish to make to the Court in a letter to the Court and attach a copy of this letter to your submission.

Elizabeth Silver

*Jeffrey M. Eilender Esq. & Bryan Freedman Esq.
Re: Silver v Lavandeira, 08-cv-6522 (JSR)(DCF)
August 13, 2008 Letter – Page 3*

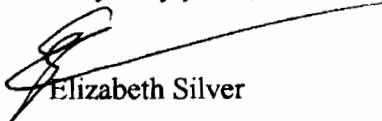
It is my belief that the purpose of your latest request for this Conference Call, appears to be so you can either not comply with Judge Rakoff's directives yesterday or not comply with the schedule entered today.

It also appears that you are now attempting to posture, Judge Shop and Forum Shop, which I believe is inappropriate and potentially sanctionable. I believe you wasted all our time, and perhaps most egregiously wasted the Court's time on a frivolous application. And, now after Oral Argument, where you believe you will or may not get the relief sought, you abandon your attempt to obtain relief in New York, and avoid a schedule in NY that was entered in response to your application.

I object and reserve all my rights. Furthermore, please note that if, as and when you make whatever written application you end up making – if you insist on failing to comply with the Court Orders and Schedules – I will respond in accordance with Federal and Local Rules and Judge Rakoff's Individual Rules.

I urge you to simply adhere to the schedule so that we can move this case forward on the expedited timetable that you originally sought and which you now seek to avoid.

Very truly yours,



Elizabeth Silver

Cc: All counsel